

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

ENTERED

FEB 27 2001

U.S. Bankruptcy Court
Durham, NC
KWC

IN RE:

William Hight,

Debtor.

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) Case No. 94-12323C-7D
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ORDER

The matter now before the court is a motion by the Debtor to reopen this case in order to obtain a determination as to the dischargeability of his obligations under a separation agreement with his former wife. The motion was heard on February 22, 2001. William L. Yaeger appeared on behalf of the Debtor and Dirk W. Siegmund appeared on behalf of Debtor's former wife, Patricia Hight. Having considered the motion, the objection to the motion and the evidence offered at the hearing, the court has concluded, for the reasons hereinafter stated, that the motion should be denied.

FACTS

The pertinent facts are not in dispute. The Debtor filed this Chapter 7 case on September 29, 1994. The Debtor had separated and entered into the separation agreement prior to the bankruptcy filing and the estranged wife was listed as a creditor and received notice of the bankruptcy filing. The Debtor was granted a discharge and his Chapter 7 case was closed without any determination having been made regarding the dischargeability of the Debtor's obligations under the separation agreement.

The Debtor agreed in the separation agreement to indemnify his former wife with respect to certain potential federal and state tax liabilities. On July 11, 2000, the former wife initiated a proceeding in the state court in New Hampshire to recover under this indemnity provision certain taxes which she had paid upon the failure of the Debtor to do so. During the course of the state court proceeding, the dischargeability of Debtor's obligation became an issue when the Debtor pleaded his bankruptcy discharge as a bar to any recovery by the former wife. The state court decided the dischargeability issue in favor of the former wife and entered judgment against the Debtor in the amount of \$8,889.00 in a judgment which was entered on July 11, 2000.

The motion now before the court was filed on January 8, 2001. The motion asserts that "the State of New Hampshire has refused to recognize the dischargeability of the obligation created by the property settlement" and prays that Debtor's Chapter 7 case be reopened "for the purpose of determining the dischargeability of a marital debt...." In opposing the motion, Debtor's former wife argues that the adjudication in state court regarding dischargeability precludes the re-litigation of the issue in bankruptcy court and that the motion to reopen therefore should be denied. The issue thus raised is the legal effect, if any, of the state court judgment upon this court's authority to make a ruling regarding the dischargeability of the debt owed by the Debtor to

his former wife under indemnity provisions of their separation agreement.

ANALYSIS

A preliminary issue in this case is whether a state court has jurisdiction to make a determination regarding the exceptions to discharge that are set forth in § 523 of the Bankruptcy Code. This preliminary issue requires an analysis of that Code section. The kinds of debt that are excepted from discharge are enumerated in subsection (a) of § 523. The excepted debts include two kinds of marital obligations, namely, debts owed to a spouse, former spouse or child of a debtor for alimony or support, contained in § 523(a)(5), and debts incurred by the debtor in the course of a divorce or separation other than alimony or child support, contained in § 523(a)(15)¹. Under § 523(c), a debtor is discharged from debts of the kinds specified in § 523(a)(2), (4), (6) and (15) unless the creditor files a timely complaint² in the bankruptcy court and a determination is made in the bankruptcy court regarding dischargeability. The effect of this provision is that the

¹The amendments to the Bankruptcy Code which added § 523(a)(15) to the list of exceptions took effect on October 22, 1994, and apply to cases filed after that date. Section 523(a)(15), therefore, did not apply in Debtor's case, which was filed on September 9, 1994.

²Pursuant to Bankruptcy Rule 4007(c), a complaint to determine dischargeability of a debt under § 523(c) must be filed in a Chapter 7 case no later than 60 days after the first date set for the meeting of creditors under § 341(a).

bankruptcy court has exclusive jurisdiction to determine the dischargeability of debts for money or property obtained by false pretenses or fraud [§ 523(a)(2)], debts for fraud or defalcation while acting in a fiduciary capacity or embezzlement or larceny [§ 523(a)(4)], debts for willful and malicious injury or damage by the debtor [§ 523(a)(6)] and marital debts of the kind specified in § 523(a)(15). As to the other kinds of debt that are excepted from discharge under § 523(a), including debts for alimony and child support under § 523(a)(5), jurisdiction may be exercised by either the bankruptcy court or the state courts. See generally, 4 COLLIER ON BANKRUPTCY ¶ 523.03 (15th ed. rev. 2000).

In the present case, the issue of whether the Debtor's liability under the separation agreement to his former wife was excepted from discharge under § 523(a)(5) of the Bankruptcy Code was raised in the state court proceeding. The state court had concurrent jurisdiction to decide the issue. Without any objections by the Debtor and or any effort by the Debtor to have the issue decided in the bankruptcy court, the state trial court ruled that the debtor's obligation to indemnify his wife was in the nature of alimony and was not discharged by the earlier discharge obtained by the Debtor in this court. The Debtor's efforts to obtain appellate relief before the Supreme Court of New Hampshire were unsuccessful and the ruling of the state trial court constitutes a final judgment that Debtor's obligation to his former

wife was nondischargeable under § 523(a)(5). Pursuant to 28 U.S.C. § 1738, this court must accord full faith and credit to the judicial proceedings of state courts. In re First Actuarial Corp. of Illinois, 182 B.R. 178, 182 (Bankr. W.D. Mich. 1995). The specific mandate of this statute is that this court give the New Hampshire state court judgment the same full faith and credit as it would "have by law or usage in the courts of such State. . . ." This court thus must look to the law of New Hampshire in determining the preclusive effect of the judgment that was entered against the Debtor. In re McNallen, 62 F.2d 619, 624 (4th Cir. 1995). Under the law of New Hampshire, "[c]ollateral estoppel precludes the relitigation by a party in a later action of any matter actually litigated in a prior action in which he or someone in privity with him was a party." Warren v. Town of East Kingston, 761 A.2d 465, 467 (2000); Appeal of Hooker, 142 N.H. 40, 694 A.2d 984 (1997); In re Alfred P., 126 N.H. 628, 495 A.2d 1264 (1985).

In the present case, the dischargeability issue was actually litigated in a state court proceeding in which the Debtor was an active, participating party. The judgment was entered by a court with jurisdiction over the parties and the subject matter of the suit. It follows that such judgment is res judicata and binding on the Debtor and is a bar to the relitigation of the dischargeability issue in this case. The Debtor thus is barred from seeking the relief described in the motion to reopen. Under such circumstances

the motion to reopen should be denied. In re Kean, 207 B.R. 118, 122 (Bankr. D.S.C. 1996); In re Whittten, 192 B.R. 10, 14-15 (Bankr. D. Mass. 1996); In re Crawford, 183 B.R. 103, 106-107 (Bankr. W.D. Va. 1995); In re Benham, 157 B.R. 655, 656-657 (Bankr. E.D. Ark. 1993).

IT IS SO ORDERED.

This 26th day of February, 2001.

William L. Stocks

WILLIAM L. STOCKS

United States Bankruptcy Judge